# In the Supreme Court of the United States

OCTOBER TERM, 1916.

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No. 600.

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F. A. DICKSON,
*Plaintiff in Error,*

AND

C. J. MINOR, F. A. DICKSON AND R. L. SMITH; ALSO ALL OTHER PERSONS UNKNOWN CLAIMING ANY RIGHT, TITLE, ESTATE, INTEREST OR LIEN IN THE REAL ESTATE DESCRIBED IN THE COMPLAINT HEREIN, *Defendants,*

*vs.*

LUCK LAND COMPANY, A CORPORATION,
*Defendant in Error.*

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## Reply Brief of Defendant in Error on Motion to Dismiss or Affirm.

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Review Publishing Co., 513 4th Ave. So., Minneapolis

## INDEX.



### Cases Cited.

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## Reply Brief of Defendant in Error on Motion to Dismiss or Affirm.

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Although the points on which plaintiff in error relies in resisting our Motion to Dismiss or Affirm, have been broadly anticipated and met in our original brief, we specifically reply to the suggestions made by plaintiff in error in his brief.

The nature of the issues are such that our briefs will serve to present our printed argument on the merits,

should the Court pass upon the merits at the same time our motion is considered.

### Nature of Issues Presented.

At page 2 of the opposing brief it is said: "We do not understand that defendant in error questions the validity or regularity of the proceedings of the government up to this point" (the point at which a *trust* patent was issued to the Indian).

We do not question the *validity* of the proceedings of the government at any point! We merely question the *effect* of those proceedings asserted by plaintiff in error. We admit that those proceedings vested title in the Indian beyond all question of *validity* on that point. But we deny that issuance of the fee simple patent to the Indian had the *effect* of foreclosing inquiry in the state courts as to the Indian's adulthood, as affecting the validity of a conveyance made by him *after* he had become so vested with title.

Plaintiff in error's brief (p. 4) admits that we should prevail if we are right in the last stated proposition.

Certainly, the fact asserted by plaintiff in error that the land involved is vacant and unoccupied cannot affect our right to dismissal of the writ of error or affirmance of the judgment below, if no Federal Question is presented, or if, any such question being presented, plaintiff in error's claims under it are manifestly frivolous. Nor is plaintiff in error's assumption that a delay in disposing of the writ of error cannot "harm" defendant in error either fair or reasonable. It is manifest that so long as the litigation remains unsettled, our

right to enjoy full ownership of the property in question is suspended.

Nor is plaintiff in error entitled to take anything by the suggestion at page 26 of his brief: "The Clapp Amendment has never been construed in the particulars in which a construction here is sought." That is best answered by the language of this Court in *Blythe v. Hinckley*, 180 U. S. 333:

> "Plaintiff urges that never before has the question been directly passed upon by this court. If he means that it has never heretofore been asserted, that in the absence of any treaty whatever upon the subject, the state has no right to pass a law in regard to the inheritance of property within its border by an alien coowner may be correct. *The absence of such a claim is not so extraordinary as the claim itself.*"

Plaintiff in error's sole reliance in this Court, as well as in the court below, is the proposition that issuance of the patent to the Indian in this case on the Secretary of Interior's finding of his adulthood is conclusive, not only as to the *vesting* of valid title in the Indian, but also as to his adulthood for the purpose of determining the validity of the conveyances *from* him, here involved. Plaintiff in error candidly admits: "If the question of the Indian's age was an open one in the case, then *plaintiff in error's two deeds were given prior to the date at which by the evidence the Indian became of age, and were avoided under the Minnesota law by his subsequent deeds to the grantors of defendant in error*" (Plaintiff in Error's Brief, p. 4).

Plaintiff in error's position in this regard is formally stated in a proposition at page 5 of his brief, that the Clapp Amendment conferred upon "adult mixed blood

Indian allottees * * * the absolute right to sell * * * the lands the laws of * * * Minnesota making conveyances * * * by minors voidable * * * to the contrary notwithstanding; and the fee simple patents so issued are final and conclusive evidence of the right of such Indian patentee to sell, incumber and alienate such lands."

EFFECT OF CLAPP AMENDMENT.

We admit that the Clapp Amendment removed all *federal restrictions* on the sale of lands of *adult* mixed blood Indian allottees, for the language of the Amendment is plain on that point.

And if there is reason or logic in the proposition that the laws of the state making conveyances by *minors* voidable cannot affect the validity of the provision of the Clapp Amendment conferring upon "*adult*" mixed blood Indians the right to convey, free of federal restrictions, we agree that it is sound.

So, it becomes clear that plaintiff in error frames the main issue upon the assertion that a fee simple patent issued under the Clapp Amendment is conclusive evidence of the patentee's right to convey. We agree that the patent is conclusive evidence that title has been vested in him, and that the federal government has removed all prior "restrictions" against alienation. The vital controversy arises on the point whether the patent is conclusive as to the Indian's adulthood for purposes other than the *vesting of title in him*. We assert that it is not—that the patent no more conclusively fixes his adult character for the purpose of the validity of

conveyances purporting to *divest* title than it would be conclusive as to his right to vote, or perform any other act requiring adulthood under the laws of the state to which Congress has expressly made him subject.

The Clapp Amendment does not by express or implied provision make a patent conclusive evidence of an Indian's adulthood, so far as the validity of conveyances from him are concerned. It merely removes federal restrictions and provides that the Indian's title shall be one in fee simple. On the other hand, Congress *did* declare, by the Act of May 8, 1906, in unambiguous terms, that this Indian became subject to the laws of Minnesota on issuance of the patent to him. And it is admitted that those laws invalidated the deeds under which plaintiff in error claims, except as controlled by the Secretary of Interior's finding of adulthood.

Under these circumstances, we respectfully submit that the validity of the conflicting conveyances involved in this controversy depends, not upon any federal statute or federal authority, but rather upon the Minnesota laws governing the validity of conveyances of private land.

A Federal Question comes into this case only so far as plaintiff in error makes the palpably unsound contention that Congress has manifested a purpose to make the Secretary's finding of adulthood conclusive beyond the point where title has vested in the Indian. And this contention is made in the face of express provisions showing a contrary legislative intention, as manifested in limiting the removal of restrictions to *adult* Indians, and in making them at the same time subject to state law.

Not only does plaintiff in error fail to point out any act of Congress sustaining his position, but he fails to cite a single case that directly or by analogy extends the doctrine concerning the conclusiveness of patents to this controversy.

## When State Jurisdiction Attached.

At page 21 of his brief, plaintiff in error says:

> "The State cannot accept the determination of the Indian's age by the federal government for the purpose of making the Indian subject to state law, both civil and criminal, and deny the correctness of that determination when the Indian seeks to convey his land. * * * Unless the Indian is an adult, he is not subject to that law, and he can only become subject to that law by the determination or adjudication of his adulthood by federal authority; hence, if he cannot become an adult by federal adjudication, he cannot become subject to the state law."

The weakness of this argument is manifest. The Acts of Congress did not make *adulthood* the condition on which an Indian should become subject to the state laws. As shown by Section 6 of the Act of 1887, amended by Act of May 8, 1906 (34 Stat. L. 182), and quoted by plaintiff in error at page 7 of his brief, Congress provided that *"when the lands have been conveyed to the Indian by patent in fee, * * * then* each and every allottee shall have the benefit of and become subject to the laws, both civil and criminal, of the state," etc.

By virtue of this enactment, the Indian in this case became subject to *all* the state laws the moment patent in fee issued to him, including those governing the

transfer of property, as well as those disconnected with his property rights.

We respectfully assert that the fundamental error into which plaintiff in error has fallen throughout the course of this case is through failure to give to the federal statutes the interpretation which they plainly require—through failure to give proper force, on one hand, to the clause of the Clapp Amendment which declares removal of "all RESTRICTIONS as to the sale, encumbrance or taxation of allotments," etc., and, on the other hand, to the equally effective statute under which "when the lands have been conveyed to the Indian by patent in fee, * * * then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the state."

## What "Restrictions" were Removed?

*"Restrictions"* is the word which should be emphasized and not the word "all," so far as this controversy is concerned. What "restrictions" were removed by Congress under the Clapp Amendment? Plainly, not those imposed by the state laws, to which Congress expressly made the Indian patentees subject, but rather those restrictions which Congress had previously imposed in its guadianship.

Restrictions as to encumbrance of the land were removed, so far as previous federal statutes were concerned, but that did not mean that the Indian could give a valid mortgage, without complying with the laws of the state governing execution of mortgages. Restrictions on taxation were removed, but that did not

permit taxation, except in accordance with the state laws the benefit of which were guaranteed by the Act of May 8, 1906. Restrictions as to the sale of the lands were removed, but manifestly not to the extent of making a sale valid should the Indian happen to be insane, or otherwise actually or constructively incapable of making a valid conveyance under the state laws to which Congress expressly made him subject.

PLAINTIFF IN ERROR'S AUTHORITIES DISTINGUISHED.

If the holding in *United States v. Rickert,* 188 U. S. 432 (cited at page 6 of plaintiff in error's brief) that, *during the trust period,* allotted lands were not subject to taxation, is pertinent here at all it supports the plain language of the latter enacted Clapp Amendment and the Act of May 8, 1906, under which the lands *did* become subject to state control when the trust period terminated.

Admitting, as we do, the soundness of plaintiff in error's statement (p. 6) that the previous restraint on alienation was, as declared in *Beck v. Flournoy Live Stock, etc., Co.,* 65 Fed. 30; 69 Fed. 886, intended by Congress as a protection of the Indian against the superior intelligence and the greed of the white man, is it not equally clear that Congress intended to afford further protection against the superior intelligence and the greed of the white man when it was enacted that the moment federal control was released the Indian should become subject to and have the benefits of the state laws?

The gist of Judge Page Morris' decision in *United States v. Park Land Co.*, 188 Fed. 383 (cited at pages 7-9 of plaintiff in error's brief), is contained in the following statement of his opinion:

> "In other words, it seems to me that by the Clapp Amendment Congress meant to say that it is conclusively presumed that an ADULT mixed blood is competent to go ahead and manage his own affairs, and therefore removed from him all restrictions on the sale of any allotment."

There is nothing in this decision on the point as to the conclusiveness of the Land Department's finding that a particular Indian was of age. In fact, the whole opinion is thoroughly consistent with our claim that Congress was vitally concerned in withholding the power of alienation until an Indian should become twenty-one years old. Neither the Clapp Amendment nor Judge Morris' decision declares that an Indian 19 years old is "competent to go ahead and manage his own affairs" because the Land Department has erroneously found that the Indian is of age.

*Elk v. Wilkins*, 112 U. S. 94; *United States v. Kagama*, 118 U. S. 375; and *United States v. Rickert*, 188 U. S. 432 (cited at page 10 of the opposing brief), all bear on the irrelevant point that Indians are wards of the federal government, until Congress releases the guardianship.

Not one of the authorities cited at pages 10-12 of plaintiff in error's brief, on the admitted proposition that a patent issued by the United States is conclusive as to the validity of the *title conveyed by the patent*, contains a word which supports plaintiff in error's claim that the patent here is conclusive as to the valid-

ity of a conveyance *from the patentee*. We do not attack the Indian's *title*, but merely claim under his own right to avoid a *transfer* of that title, invalid under the state laws to which Congress made him subject concurrently with the issuance of the patent.

We, of course, concede that, as decided in *United States v. Holliday*, 3 Wall. 407 (cited at page 15 of plaintiff in error's brief), Congress was the sole judge as to when this Indian should be competent to manage his own affairs. This exclusive judgment was, however, exercised by declaring him to be competent when he should become twenty-one. Congress was concerned more on the point of his actual adulthood than with the Secretary of Interior's finding on *ex parte* affidavits as to when the Indian became of age. The Secretary's discretion was limited by the express terms of the Clapp Amendment to the case of *full* blood Indians. As to mixed bloods, Congress declared when they should be deemed to be "competent to handle their own affairs," and that point was fixed at *adulthood*. As to full bloods they are to be released as the Secretary finds them to possess the requisite degree of competency.

Our concession of the soundness of the proposition stated by plaintiff in error at page 26 of his brief, that the presence of a Federal Question on a writ is not affected by the question whether the state court made reference to it, renders examination of the cases cited under that proposition unnecessary. Those cases do not hold that the mere assertion of a Federal Question by a plaintiff in error gives this Court jurisdiction, nor contradict the established rule that even when a Federal Question is raised the judgment below should be

affirmed on such a motion as we now present, when the decision under review is so manifestly correct as to require no further argument.

## Congress' Attitude Toward Indians.

Plaintiff in error's argument at pages 13, 14, of his brief concerning the Government's status as guardian for Indians only serves to show in our favor that Congress must have intended that on release of its guardianship over the Indian's property there would be some substituted governmental protection in the Indian's behalf, making more significant the provision of the Act of May 8, 1906, for subjection of the Indians to state law.

We dispute the assertion made in the same paragraph of the opposing brief that there is any essential difference between the effect of a fee simple patent to an Indian made subject to state law concurrently with the issuance of the patent and any other fee simple patent issued by the United States to a person already subject to such laws. In either case, the patent is conclusive as to the vesting of title in the patentee, but the validity of conveyance from him is to be tested by the state laws.

We controvert plaintiff in error's assertion at page 24 of his brief that the federal government has facilities for ascertaining the age of an Indian superior to those of the state. At least, those superior facilities failed in this particular case, for it is admitted that the *ex parte* affidavits on which the Secretary of Interior found adulthood were inaccurate, and the facilities in

the state courts for proving the Indian's true age were so efficient that plaintiff in error admitted that the Indian did not become of age until two years after the date of adulthood stated in the proceedings before the Secretary.

Plaintiff in error's observations at page 18 concerning the presumptions probably indulged by Congress because "the age at which Indians become adults is the same under state and federal law," are easily turned in our favor. Of course, Congress did not presume that in every case the Secretary would be imposed upon by false proof as to the date of an Indian's majority, but it is by no means a violent presumption that Congress knew that in numerous cases there might be such imposition. And this being so, is it not fair to assume that Congress intended that those irregularities could be corrected by the application of the state laws under which a valid conveyance could not be made by a minor? This view is fortified by plaintiff in error's own suggestion at page 19 that *adulthood* was imposed by Congress as the only period during which this Indian could make a valid conveyance for "the protection of the Indian from the results of improvidence due to his immaturity and lack of experience.

Plaintiff in error is right when he says at page 22 that "it is a fundamental principle of statutory construction that Courts will try to give effect to every part of a statute," but there is no part of the Clapp Amendment or any federal statute which even hints at contradiction of the main and plainly expressed purpose of limiting the right of alienation to actual, and not fictional, adults.

Some degree of anomaly necessarily arises under a situation whereby this Indian is necessarily regarded as having reached his majority before the patent issued to him, because of the just principles of law under which a patent must be deemed to be conclusive for the purposes of vesting title in the patentee, as against collateral attack, and the other phase of the situation under which it is undisputed that the Indian was actually a minor. But is not this anomaly most fairly and logically resolved by holding that the mistaken finding of adulthood is not to be given effect beyond the necessary point—the *vesting* of title free from any further control of the federal government, but subject to state laws relating to the disvestiture of title.

As to any hazards involved in buying Indian lands, it is more consistent with the purposes clearly expressed by Congress in all Indian legislation that such purchasers take those hazards, which are commonly known to exist, than that a policy be declared whereby the Congressional intention could be thwarted by easily obtained *ex parte* affidavits as to an Indian's age.

Wherefore, we respectfully submit that either the writ of error should be dismissed, or the judgment below should be affirmed.

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